

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Evelis Otero	Team: Team # 3	CCRB Case #: 201205704	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/01/2012 8:24 PM	Location of Incident: 1171 Morrison Avenue	Precinct: 43	18 Mo. SOL 11/1/2013	EO SOL 11/1/2013	
Date/Time CV Reported Thu, 05/03/2012 10:29 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 05/03/2012 10:29 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Carmen Torresortiz	28927	948834	PBBX
2. SGT Berkley Vantull	04296	934156	PBBX
3. POF Ronnette Cooper	07500	948810	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POF Carmen Torresortiz	Force: PO Carmen Torres-Ortiz struck § 87(2)(b) with an asp.	
B.POF Ronnette Cooper	Force: PO Ronnette Cooper struck § 87(2)(b) with an asp.	
C.SGT Berkley Vantull	Force: Sergeant Berkley Vantull used pepper spray against § 87(2)(b)	
D.POF Carmen Torresortiz	Force: PO Carmen Torres-Ortiz used physical force against § 87(2)(b)	
E.POF Ronnette Cooper	Force: PO Ronnette Cooper used physical force against § 87(2)(b)	
F.SGT Berkley Vantull	Force: Sergeant Berkley Vantull used physical force against § 87(2)(b)	

### Case Summary

On May 1, 2012, Sergeant Berkley Vantull of Patrol Borough Bronx called IAB to report that § 87(2)(b) was injured while in police custody, generating IAB Log No. 12-24028 (encl. B-1 – B-2). The aforesaid complaint was forwarded to the CCRB on June 12, 2012. On May 3, 2012, § 87(2)(b) filed a complaint regarding this incident via the CCRB's online website (encl. B-3 – B-7). On May 6, 2012, § 87(2)(b) also filed this complaint via telephone with IAB, generating IAB Log No. 12-24902 (encl. B-10 – B-11). The aforesaid complaint was forwarded to the CCRB on June 11, 2012.

On May 1, 2012, at approximately 8:24 p.m., § 87(2)(b) was driving in the vicinity of 1171 Morrison Avenue in the Bronx when he was stopped by PO Carmen Torres-Ortiz, PO Ronnette Cooper and Sergeant Berkley Vantull of Patrol Borough Bronx, for failing to signal. The following allegations resulted from the officers' actions:

- **Allegation A – Force: PO Carmen Torres-Ortiz struck § 87(2)(b) with an asp.**
- **Allegation B – Force: PO Ronnette Cooper struck § 87(2)(b) with an asp.**
- **Allegation C – Force: Sergeant Berkley Vantull used pepper spray against § 87(2)(b)**
- **Allegation D – Force: PO Carmen Torres-Ortiz used physical force against § 87(2)(b)**
- **Allegation E – Force: PO Ronnette Cooper used physical force against § 87(2)(b)**
- **Allegation F – Force: Sergeant Berkley Vantull used physical force against § 87(2)(b)**

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b).

### Results of Investigation

#### Civilian Statement

##### **Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) at the time of the incident. He is a black man who is 5'5" tall, weighs 165 pounds and has black hair and brown eyes.

##### **Arrest Photograph**

§ 87(2)(b)'s arrest photo did not show any visible injuries to his face (encl. C-6).

##### **Statements to Medical Personnel**

- The FDNY Pre-Hospital Care Report for § 87(2)(b) indicates that § 87(2)(b) complained of pain to his arms and minor swelling to the top of his head (encl. E-1 – E-4).
- § 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. E-5 – E-34). § 87(2)(b)'s chief complaint was right elbow pain and headache. § 87(2)(b) informed medical personnel that officers pepper sprayed him, pushed him to the ground, punched, kicked and struck him with asps.

##### **CCRB Testimony**

§ 87(2)(b) was interviewed at the CCRB on June 28, 2012. § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b).

On May 1, 2012, at approximately 8:24 p.m., § 87(2)(b) was driving his vehicle, a 2007 navy blue Chevy Impala with no tinted windows, and stopped at a stoplight near 1171 Morrison Avenue in the Bronx. § 87(2)(b) was taking his friend, § 87(2)(b) who was sitting in the passenger seat, home. § 87(2)(b) did not have any contact information for § 87(2)(b) and stated that § 87(2)(b)'s last known cell phone number was disconnected because he was irresponsible with paying his cell phone bill.

§ 87(2)(b) noticed a marked RMP at the intersection. While waiting at the stoplight, § 87(2)(b) told § 87(2)(b) that they could take a short cut if they turned at the stoplight, so § 87(2)(b) used his signal lights and turned when the stoplight turned green. The officers in the RMP then turned on their lights and sirens and drove after § 87(2)(b).

§ 87(2)(b) stopped, pulled over, and rolled down the windows. Two uniformed officers, identified via the investigation as PO Carmen Torres-Ortiz and PO Ronnette Cooper of Patrol Borough Bronx, approached § 87(2)(b)'s vehicle. § 87(2)(b) described PO Torres-Ortiz as a Dominican woman with a dark complexion who was 5'3" tall and had dark hair. § 87(2)(b) described PO Cooper as a black woman who was also 5'3" tall, had a medium build and appeared to be in her early 20s. PO Torres-Ortiz approached the driver's side and PO Cooper approached the passenger side. They asked for § 87(2)(b)'s driver's license and registration. § 87(2)(b) did not comply and asked, "What am I being pulled over for?" § 87(2)(b) asked this three times, but the officers would not respond. Ultimately, § 87(2)(b) provided his documents to the officers, which they proceeded to check.

After they checked § 87(2)(b)'s driver's license, PO Torres-Ortiz and PO Cooper instructed § 87(2)(b) to exit his vehicle. § 87(2)(b) still did not know why he had been stopped but was later informed that he was stopped because he failed to signal. § 87(2)(b) complied and stepped out of his vehicle. PO Torres-Ortiz and PO Cooper informed § 87(2)(b) that § 87(2)(b) and ordered him to place his hands behind his back. § 87(2)(b) did not believe the officers. However, § 87(2)(b) learned after this incident that his license, which was registered in Virginia, was suspended three days prior to this incident. Since he was in New York City, § 87(2)(b) did not receive the notification of the suspension because it had been mailed to his residence in Virginia.

After being ordered to place his hands behind his back, the officers never gave § 87(2)(b) a chance to oblige and immediately started to twist his hands behind his back. § 87(2)(b) yanked his hands away. PO Torres-Ortiz brandished her asp and struck § 87(2)(b) approximately 15 to 18 times in the ribs, arms and back. PO Cooper contributed to the blows with her asp as well. As this was happening, a uniformed officer, identified via the investigation as Sergeant Berkley Vantull of Patrol Borough Bronx, approached and pepper sprayed § 87(2)(b). § 87(2)(b) described Sergeant Vantull as a black man in his mid-30s who was 5'6" tall and had a slim build.

After being sprayed, § 87(2)(b)'s vision was severely impaired, and he could not see much of what happened afterwards. There were two additional officers who arrived on the scene but he could not describe them. The officers proceeded to punch and kick § 87(2)(b) who was trying to cover his face the entire time. They only had one handcuff on § 87(2)(b) at this time so Sergeant Vantull swept § 87(2)(b)'s legs and brought him down to the ground. He put up a bit of struggle when he was being taken to the ground because he wanted to go down the "right way," and not damage his face. § 87(2)(b) then put his other hand behind his back to be handcuffed, but he was still hit on the side six or seven more times with asps and kicks. § 87(2)(b) never attempted to fight, but he shielded himself from the blows so they would not hit his face. Shortly thereafter, § 87(2)(b) was fully handcuffed and transported to the 43<sup>rd</sup> Precinct stationhouse. While in police custody, § 87(2)(b) requested medical treatment and was escorted to § 87(2)(b), where they confirmed that he had no dislocations, fractures or serious physical injuries.

### **Attempts to Identify and Contact Witnesses**

- § 87(2)(b) identified his friend, § 87(2)(b) as a witness to this incident. However, § 87(2)(b) did not have any contact information for § 87(2)(b). A call was made to § 87(2)(b) on October 15, 2012. However, contact was not established with § 87(2)(b) and a voice message could not be left because his voicemail box was full. An email was sent to § 87(2)(b) on the same day. § 87(2)(b) contacted the undersigned investigator on October 25, 2012, at which time he stated that § 87(2)(b) moved out of New York State and that he did not have any updated contact information for him. A search of Lexis Nexis yielded negative results for any contact information for § 87(2)(b). To date, the CCRB has been unable to establish contact with § 87(2)(b).

## NYPD Statements

### Subject Officer: PO CARMEN TORRES-ORTIZ

- PO Torres-Ortiz was § 87(2)(b) old at the time of the incident. She is a Hispanic woman who is 5'4" tall, weighs 175 pounds and has brown hair and brown eyes.
- On the day of the incident, PO Torres-Ortiz was assigned to the Impact Response Team at the 43<sup>rd</sup> Precinct. She worked in uniform from 2:00 p.m. to 10:35 p.m. with PO Ronnette Cooper and Sergeant Berkley Vantull.

### Criminal Complaint and Arrest Reports

§ 87(2)(b)

§ 87(2)(b) was charged

§ 87(2)(b)

### Memo Book

PO Torres-Ortiz's memo book notes verbatim that: "At 8:24 p.m., one car stop in front of 1171 Morrison Avenue for not using his left signal to turn left on Morrison Avenue from Westchester Avenue. Upon lawful stop, defendant became agitated and refused three times to give his driver's license and registration. I then informed him that he had to give the documents or step out of the car. He gave documents as he cursed out loud, saying, 'The fucking cops are always harassing me.' Upon investigation of MDT, he was suspended (one scoff on one date). When we asked the defendant to get out of the vehicle, he said no he wasn't getting out. He yelled again that he wasn't getting out because he was not getting arrested and because he knew for a fact that his license was not suspended. Defendant did resist arrest by flailing his arms to avoid being arrested. O.C. spray administered.

§ 87(2)(b), § 87(2)(b), DOB § 87(2)(b) male black. Perpetrator went to § 87(2)(b) after coming to the stationhouse for O.C. spray and high blood pressure (encl. D-6 – D-9)."

### CCRB Testimony

PO Carmen Torres-Ortiz was interviewed at the CCRB on March 21, 2013 (encl. D-10 – D-12). On May 1, 2012, at approximately 8:24 p.m., PO Torres-Ortiz, PO Cooper and Sergeant Vantull were on patrol in the vicinity of 1171 Morrison Avenue in the Bronx when they observed a vehicle make a left turn onto Morrison Avenue without using the left turn signal. PO Torres-Ortiz was the operator of the RMP and she was driving at approximately 20 m.p.h. when all three officers made this observation. The officers then pulled the vehicle over.

PO Torres-Ortiz and PO Cooper approached the vehicle, and PO Torres-Ortiz spoke with the driver, who was later identified as § 87(2)(b). There was a male in the front passenger seat, who was identified via the investigation as § 87(2)(b). § 87(2)(b) did not exit the vehicle at any point and did not otherwise become involved in this incident. PO Torres-Ortiz asked § 87(2)(b) for his driver's license and his registration. § 87(2)(b) failed to comply and replied, "For what?" PO Torres-Ortiz explained that he failed to signal. § 87(2)(b) argued with PO Torres-Ortiz, telling her that he had signaled. PO Torres-Ortiz reiterated to § 87(2)(b) that he failed to signal and that her fellow officers made this observation as well. Once again, PO Torres-Ortiz requested § 87(2)(b)'s documents. § 87(2)(b) failed to comply again, stating, "Why do I have to give them to you? I'm not giving it to you." PO Torres-Ortiz requested his documents a third time and § 87(2)(b) again refused.

After having refused to comply with her directives a third time, PO Torres-Ortiz informed § 87(2)(b) that she was going to ask him to step out of the vehicle if he failed to produce his documents. § 87(2)(b) begrudgingly complied at this time. § 87(2)(b) retrieved his wallet from his pants pocket while saying, "Fucking cops. They're always fucking with me." § 87(2)(b) then handed his documents to PO Torres-Ortiz.

PO Torres-Ortiz and PO Cooper returned to their vehicle and ran § 87(2)(b)'s information through the Mobile Digital Terminal (MDT), which revealed that his license was suspended. PO Torres-Ortiz and PO Cooper returned to § 87(2)(b)'s vehicle.

PO Torres-Ortiz ordered § 87(2)(b) to step out of his vehicle, but he refused, asking, "For what?" PO Torres-Ortiz informed § 87(2)(b) that she would further explain the situation once he stepped out of the vehicle. § 87(2)(b) again refused, saying, "I'm not stepping out of the vehicle." PO Torres-Ortiz again ordered § 87(2)(b) to step out of his vehicle, but he refused. PO Torres-Ortiz opened the driver's side door, which was already unlocked and again ordered § 87(2)(b) to exit his vehicle. § 87(2)(b) who had his seatbelt on, told PO Torres-Ortiz, "I'm not getting out. I don't know what you're going to do but I'm not getting out." After ordering him several more times to exit his vehicle, § 87(2)(b) finally removed his seatbelt and partially stepped out of his vehicle by having one leg in and the other out of his vehicle. § 87(2)(b) informed the officers again that he was not going to exit his vehicle. PO Torres-Ortiz and PO Cooper grabbed § 87(2)(b) and attempted to remove him from the vehicle but they were unable to do so because of his size and because he resisted by holding onto the vehicle. Sergeant Vantull approached at this point.

Sergeant Vantull ordered § 87(2)(b) to exit his vehicle, but he continued to resist. PO Torres-Ortiz and PO Cooper managed to forcibly remove § 87(2)(b) from his vehicle by pulling him out, but once he was removed from his vehicle he held onto the driver's side door and refused to let go. § 87(2)(b) yelled, "See what they're doing to me!" The officers ordered § 87(2)(b) to let go of the door but he refused and kicked at PO Torres-Ortiz and PO Cooper to keep them away from him. PO Torres-Ortiz was kicked several times on her legs but she was unable to estimate how many times she was kicked. PO Torres-Ortiz believes that PO Cooper was also struck but was uncertain. The officers repeatedly instructed § 87(2)(b) to stop resisting but he refused to comply. Sergeant Vantull then pepper sprayed § 87(2)(b).

§ 87(2)(b) let go of the driver's side door upon being pepper sprayed. However, it appeared as if the pepper spray had no effect on § 87(2)(b) because he did not stop resisting. § 87(2)(b) continued to kick and also swung at the officers. § 87(2)(b) managed to punch PO Torres-Ortiz several times. PO Torres-Ortiz was struck on her arms. PO Torres-Ortiz could not recall if Sergeant Vantull was struck, but indicated that PO Cooper was likely struck. PO Torres-Ortiz had handcuffs in one hand and her radio in the other. PO Torres-Ortiz went over the radio twice to request additional units because they did not receive immediate assistance. PO Cooper had her asp out but PO Torres-Ortiz could not recall what PO Cooper did with her asp. PO Torres-Ortiz could not recall if PO Cooper struck § 87(2)(b) with the asp. PO Torres-Ortiz was never able to brandish her asp because her hands were occupied with her radio and handcuffs.

All three officers fought with § 87(2)(b) in an effort to bring him to the ground. However, PO Torres-Ortiz could not recall and could not otherwise articulate the details of this struggle. She recalled that § 87(2)(b) was brought to the ground but could not recall anything else. § 87(2)(b) continued to violently resist, even while on the ground and the officers were unable to handcuff him. PO Torres-Ortiz could not recall punching or kicking § 87(2)(b) or otherwise seeing any officer doing so. Unidentified uniformed officers from the 43<sup>rd</sup> Precinct responded to the location a few minutes later. PO Torres-Ortiz was unable to identify any of the officers who arrived as backup and she was also unable to estimate how many additional officers arrived at the location.

Once backup arrived, PO Torres-Ortiz stepped aside and allowed them to take over. § 87(2)(b) was immediately handcuffed and placed into an RMP. It took approximately seven to eight minutes to place § 87(2)(b) into handcuffs. Afterwards, § 87(2)(b) was transported to the 43<sup>rd</sup> Precinct stationhouse.

At the stationhouse, an ambulance was called for § 87(2)(b) because he had been pepper sprayed. When EMS arrived, he complained of high blood pressure and was removed to § 87(2)(b). PO Torres-Ortiz sustained contusions to her arms and legs as a result of this incident. The contusions took several weeks to heal, but PO Torres-Ortiz did not seek any medical attention and did not fill out any paperwork in regards.

**Subject Officer: PO RONNETTE COOPER**

- *PO Cooper was § 87(2)(b) old at the time of the incident. She is a black woman who is 5'2" tall, weighs 170 pounds and has brown hair and brown eyes.*

- *On the day of the incident, PO Cooper worked the same assignment and tour as PO Torres-Ortiz.*

### **Memo Book**

PO Cooper's memo book notes verbatim that: "At 8:18 p.m., one car stop on Morrison Avenue in front of 1171 for failure to signal. 10-85 (additional unit needed) at location. Defendant was very uncooperative. After DMV check was conducted, revealed defendant's license was suspended. Asked defendant several times to step out of vehicle. Defendant refused several times. After coming out of vehicle, defendant was yelling that he was not going to be arrested because he knew for a fact his license was not suspended. Defendant resisted arrest. OC spray was used. One under arrest by PO Torres-Ortiz. Sergeant Vantull on scene (encl. D-19 – D-21)."

### **CCRB Testimony**

PO Ronnette Cooper was interviewed at the CCRB on April 19, 2013 (encl. D-22 – D-24). § 87(2)(g)

When the officers first observed § 87(2)(b)'s vehicle, they were traveling westbound on Westchester Avenue, while § 87(2)(b) was traveling eastbound on Westchester Avenue. PO Torres-Ortiz, who was the operator, was about to make a right turn when § 87(2)(b) made a last minute left turn without signaling, nearly colliding with their RMP. PO Torres-Ortiz had to swerve out of the way to avoid the collision. The officers used lights and sirens and pulled the vehicle over in front of 1171 Morrison Avenue. Their intention was to check the driver's license and let him go with only a warning.

PO Torres-Ortiz approached the driver's side, while PO Cooper approached the passenger side. PO Torres-Ortiz explained to § 87(2)(b) the reason why he was stopped and requested his driver's license. § 87(2)(b) was rude, loud and defensive, stating, "You're stopping me illegally." PO Torres-Ortiz requested his driver's license four to five times but he refused to provide it each time. PO Cooper stepped in at this time and also requested his driver's license approximately two to three times. § 87(2)(b) responded the same way each time until he finally relinquished his driver's license to the officers. The officers then returned to their vehicle.

After learning that § 87(2)(b)'s license was suspended, all three officers approached the driver's side of § 87(2)(b)'s vehicle. PO Torres-Ortiz explained the situation to § 87(2)(b) and ordered him to exit his vehicle. § 87(2)(b) started to yell, stating, "I'm not going to be arrested. Every time I come to this precinct the same thing happens to me. I've had several incidents with officers from your precinct. I'm not getting out of my car." PO Torres-Ortiz ordered § 87(2)(b) to exit his vehicle twice and he refused. Sergeant Vantull stepped in and ordered § 87(2)(b) to exit his vehicle. § 87(2)(b) again refused. Sergeant Vantull informed § 87(2)(b) that he was making the situation larger than what it needed to be because he only needed to go to the precinct and would be released once paperwork was prepared. § 87(2)(b) still refused to comply.

Sergeant Vantull reached for the driver's side door, which was unlocked and had its window rolled down, and opened the door. At the same time, PO Torres-Ortiz assisted Sergeant Vantull by pulling the door from the top panel, but as they opened the door, § 87(2)(b) slammed it shut on PO Torres-Ortiz's arm. § 87(2)(b) repeatedly argued and refused to let the door go, telling the officers that his license was not suspended. Sergeant Vantull and PO Cooper tried to open the door. PO Torres-Ortiz either fell to the ground or went to the ground on her own in an attempt to pry her arm free from the door. The officers struggled back and forth with the door while instructing § 87(2)(b) to exit his vehicle, until they finally managed to get it open. PO Cooper could not recall if § 87(2)(b) exited his vehicle on his own or if he was forcibly removed from the vehicle, but once he was out of the vehicle he immediately started flailing his arms.

Once out of the vehicle, § 87(2)(b) continually flailed and said, "I'm not getting arrested. My license isn't suspended. You guys are always harassing people." Sergeant Vantull then pepper sprayed § 87(2)(b). PO Cooper was also pepper sprayed in the process and temporarily blinded as a result. PO Cooper could not see clearly during the struggle. PO Cooper recalled being pushed and nearly being knocked to the ground by someone during the struggle, but she did not see who did this. The officers continued to struggle with § 87(2)(b) who resisted arrest. PO Cooper managed to pull her arm out and swung it, but she did not see where she swung it and did not know whether she actually made contact with anyone. PO Cooper heard § 87(2)(b) saying, "I'm going to sue

you all.” The officers managed to handcuff one of § 87(2)(b) s arms, but he continued to resist and they were unable to fully handcuff him. One of the officers called for additional units.

Additional units arrived shortly thereafter and assisted the officers. PO Cooper was unable to identify any of the officers who responded to the location to assist them. With the assistance of the additional officers, PO Torres-Ortiz, PO Cooper and Sergeant Vantull were finally able to handcuff § 87(2)(b). PO Cooper could not recall whether § 87(2)(b) was brought to the ground. PO Cooper did not see PO Torres-Ortiz brandishing her asp during this incident. PO Cooper did not punch or kick § 87(2)(b) and did not see any officer do so. PO Cooper sustained only minor injuries as a result of this incident, but required no treatment. PO Cooper could not recall if Sergeant Vantull was injured. PO Torres-Ortiz sustained contusions to her arm. Once handcuffed, § 87(2)(b) was transported to the 43<sup>rd</sup> Precinct stationhouse.

Once at the stationhouse, PO Cooper washed her eyes out. § 87(2)(b) complained of a scraped knee and of having hit his head during the struggle. PO Cooper was not aware of how § 87(2)(b) hit his head. An ambulance was called for § 87(2)(b) and he was removed to the hospital.

#### **Subject Officer: SERGEANT BERKLEY VANTULL**

- *Sergeant Vantull was § 87(2)(b) old at the time of the incident. He is a black man who is 5’10” tall, weighs 165 pounds, is bald and has brown eyes.*
- *On the day of the incident, Sergeant Vantull was the 43<sup>rd</sup> Precinct’s Impact Supervisor. He worked in uniform from 1:48 p.m. to 10:45 p.m., with PO Carmen Torres-Ortiz and PO Ronnette Cooper.*

#### **Memo Book**

Sergeant Vantull’s memo book notes verbatim that: “At 8:24 p.m., one under by PO Torres-Ortiz in front of 1171 Morrison Avenue. Car stop and resisting arrest (encl. D-13 – D-15).”

#### **CCRB Testimony**

Sergeant Berkley Vantull was interviewed at the CCRB on April 18, 2013 (encl. D-16 – D-18). § 87(2)(g)

When PO Torres-Ortiz and PO Cooper returned to the RMP with § 87(2)(b) s documents, they informed Sergeant Vantull that § 87(2)(b) was uncooperative and refused to provide his driver’s license to them. The officers ran § 87(2)(b) s license and learned that it was suspended. After learning that it was suspended, all three officers returned to § 87(2)(b) s vehicle and they all approached the driver’s side. There were no other civilians in § 87(2)(b) s vehicle. PO Torres-Ortiz informed § 87(2)(b) that he was under arrest § 87(2)(b) and instructed him to step out of his vehicle. § 87(2)(b) became irate and looked at the officers defiantly up and down as if “squaring them up,” and refused to step out of his vehicle. PO Torres-Ortiz asked § 87(2)(b) to exit his vehicle approximately two to three times and he refused each time. Sergeant Vantull could not recall if PO Cooper was issuing any directives at this time. Sergeant Vantull also issued the same orders approximately two to three times, but § 87(2)(b) refused. § 87(2)(b) continually told the officers, “Why ya’ll stopping me? Why ya’ll arresting me? Why ya’ll harassing me?”

After issuing the same directives several times, § 87(2)(b) opened the driver’s side door, but remained standing between the door and his vehicle. The officers then attempted to handcuff § 87(2)(b) but as soon as they tried doing so, § 87(2)(b) put his arms through the open window of the driver’s side door and held onto the door. All three officers ordered § 87(2)(b) approximately four to five times each to stop resisting and to put his hands behind his back but he refused. The officers were unable to pull § 87(2)(b) off the door and he continually refused to comply. Sergeant Vantull then pepper sprayed § 87(2)(b). § 87(2)(b) s grip on the door loosened when he was pepper sprayed. The officers then pulled § 87(2)(b) off the door and they all fell to the ground. Sergeant Vantull could not recall how § 87(2)(b) was positioned when he landed on the ground. Sergeant Vantull sustained minor scrapes and contusions from the fall. Sergeant Vantull recalled that PO Torres-Ortiz sustained contusions as well.

The officers and § 87(2)(b) struggled and rolled around on the ground. § 87(2)(b) kicked, flailed and swung at the officers. Sergeant Vantull was never struck and he could not recall if PO Torres-Ortiz or PO Cooper were struck. All three officers had difficulty handcuffing § 87(2)(b) who continually resisted arrest. Sergeant Vantull heard sirens during the struggle. He could not recall whether they called for assistance or if someone called 911. Several unidentified officers responded shortly thereafter. Sergeant Vantull recalled seeing unmarked and marked vehicles responding to the location but he was unable to identify any of the officers who arrived to assist. It took the assistance of additional officers to finally get § 87(2)(b) handcuffed. Sergeant Vantull could not recall whether PO Torres-Ortiz or PO Cooper brandished their asps. Sergeant Vantull could not recall seeing § 87(2)(b) struck with asps. Sergeant Vantull did not punch or kick § 87(2)(b) and did not see any officer do so. It took three to four minutes to handcuff § 87(2)(b). Once handcuffed, § 87(2)(b) stopped resisting.

§ 87(2)(b) made no statements or complaints of pain, injuries or of officers using excessive force against him. Once § 87(2)(b) was transported to the 43<sup>rd</sup> Precinct stationhouse, Sergeant Vantull requested EMS, as procedure, to have his eyes washed. Sergeant Vantull only noticed that § 87(2)(b) had teary eyes from the pepper spray but did not see any visible physical injuries on him. § 87(2)(b)'s vehicle was brought to the stationhouse, but Sergeant Vantull could not recall by whom or what happened with the vehicle.

### **Medical Records**

- The FDNY Pre-Hospital Care Report for § 87(2)(b) indicates that § 87(2)(b) did not have any visible injuries (encl. E-1 – E-4).
- § 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. E-5 – E-34). The diagnosis was swelling to his right elbow, for which he was prescribed 800mg of Motrin. The medical records revealed no dislocations, fractures or other physical injuries.

### **NYPD Documents**

#### **SPRINT Report**

SPRINT report number § 87(2)(b) (encl. F-13 – F-14) lists a request for additional units at 8:18 p.m. and one under arrest at 8:24 p.m.

#### **43<sup>rd</sup> Precinct Command Log**

According to the Command Log for May 1, 2012 (encl. F-15), § 87(2)(b) was lodged into the stationhouse at 8:30 p.m. His physical and mental conditions were listed as apparently normal.

### **Disposition of Arrest for Incident**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

### **Criminal Conviction History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

### **Status of Civil Proceedings**

- According to the NYC Comptroller's Office, no Notice of Claim has been filed regarding this incident, as of April 9, 2013, which is more than eight months after the expiration of the 90-day filing deadline (encl. H-11).

### **CCRB History of Civilian**

- § 87(2)(b) has not filed a CCRB complaint prior to this incident (encl. A-4).

### **CCRB History of Subject Officers**



- PO Torres-Ortiz and PO Cooper have been a members of service for two years each and there are no substantiated CCRB allegations against them (encl. A-1 – A-2).
- Sergeant Vantull has had one substantiated allegation at the CCRB in his nine years of service with the NYPD (encl. A-3).
  - In CCRB Case No. 200411813, the allegation was abuse of authority (refusal to provide name/shield number). The Board recommended charges. The NYPD disposition was Instructions.

## Conclusion

### Investigative Findings and Recommendations

#### Identification of Subject Officers

- PO Torres-Ortiz, PO Cooper and Sergeant Vantull acknowledged interacting with § 87(2)(b) § 87(2)(g).

**Allegation A – Force: PO Carmen Torres-Ortiz struck § 87(2)(b) with an asp.**

**Allegation B – Force: PO Ronnette Cooper struck § 87(2)(b) with an asp.**

**Allegation C – Force: Sergeant Berkley Vantull used pepper spray against § 87(2)(b)**

**Allegation D – Force: PO Carmen Torres-Ortiz used physical force against § 87(2)(b)**

**Allegation E – Force: PO Ronnette Cooper used physical force against § 87(2)(b)**

**Allegation F – Force: Sergeant Berkley Vantull used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Torres-Ortiz and PO Cooper struck him more than 18 times with their asps during the course of this incident. § 87(2)(b) also alleged that Sergeant Vantull pepper sprayed him. Additionally, § 87(2)(b) alleged that PO Torres-Ortiz, PO Cooper and Sergeant Vantull repeatedly punched and kicked him before and after he was taken to the ground.

PO Torres-Ortiz denied ever brandishing her asp, stating that her hands were occupied with her handcuffs and her radio, as she was attempting to handcuff § 87(2)(b) who violently resisted, while requesting additional units to come to the scene. PO Torres-Ortiz could not recall punching or kicking § 87(2)(b) or otherwise seeing any officer doing so. § 87(2)(g). Neither of PO Torres-Ortiz's partners ever claimed to have seen her brandishing her asp during this incident.

PO Cooper acknowledged brandishing her asp during the struggle. According to PO Cooper, § 87(2)(b) was uncooperative, resisted arrest and closed the door on PO Torres-Ortiz's arm when she attempted to open the driver's side door. PO Cooper stated that she brandished her asp after § 87(2)(b) had been pepper sprayed. However, PO Cooper had been blinded from the pepper spray and could not see what happened during the struggle. PO Cooper acknowledged swinging her asp but she did not know if she actually made contact with § 87(2)(b) at any point because she could not see. PO Cooper denied punching or kicking § 87(2)(b) or otherwise seeing any officer doing so. § 87(2)(g). PO Torres-Ortiz recalled seeing PO Cooper brandishing her asp during the incident but she could not recall seeing what PO Cooper did with her asp. Sergeant Vantull could not recall seeing either of the officers brandishing their asps.

Sergeant Vantull acknowledged pepper spraying § 87(2)(b) § 87(2)(g). All three officers stated that § 87(2)(b) refused to comply with their orders when he was informed that he was under arrest. According to the officers, § 87(2)(b) refused to place his hands behind his back and grabbed onto the driver's side door. After repeated verbal commands, Sergeant Vantull pepper sprayed § 87(2)(b). § 87(2)(b)'s arrest photo did not show any visible injuries to his face (encl. C-6). EMS noted on the FDNY Pre-Hospital Care Report that § 87(2)(b) had no visible injuries (encl. E-1 – E-4). § 87(2)(b) was treated at § 87(2)(b) while he was in police custody (encl. E-5 – E-34). The diagnosis was swelling to § 87(2)(b)'s right elbow. The medical records revealed no dislocations, fractures or other physical injuries. ■

§ 87(2)(b) acknowledged being uncooperative with the officers. § 87(2)(b) also acknowledged resisting by pulling his arms away and refusing to go to the ground when Sergeant Vantull attempted to sweep his legs. § 87(2)(b) also acknowledged refusing to place his hands behind his back, because he used his hands to shield his face during the entire struggle.

NYPD Patrol Guide Procedure 203-11, states that officers can use minimum force necessary to effect an arrest of a violent or resisting individual (encl. AA-1 – AA-2). Additionally, NYPD Patrol Guide Procedure 212-95 states, O.C. pepper spray may be used to affect an arrest, establish physical control of a subject resisting arrest and to establish physical control of a subject attempting to flee from arrest or custody (encl. AA-2 – AA-5). Moreover, O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance.

Team: 3

Investigator: \_\_\_\_\_ Evelis Otero \_\_\_\_\_ 04/26/2013  
Signature Print Date

Supervisor: \_\_\_\_\_

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Title/Signature	Print	Date

Reviewer: \_\_\_\_\_

Title/Signature                  Print                  Date

Reviewer: \_\_\_\_\_

Title/Signature	Print	Date
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